

REMARKS

The Office Action mailed April 18, 2006 has been received and the Examiner's comments carefully reviewed. Claims 35 and 36 have been allowed. Applicants thank the Examiner for this notification. Claim 10 has been amended. No new matter has been entered. Claims 11 and 40-48 have been cancelled. Claims 1-10, 12-16, 35-39, and 49 are currently pending. Applicants respectfully submit that the pending claims are in condition for allowance.

It is noted that the Examiner rejected some of the claims upon U.S. Patent 5,975,769, issued to Larson et al. Applicants respectfully request the Examiner to issue a PTO-892 form citing U.S. Patent 5,975,769, so that this reference is listed on the face of any issuing patent.

Finality of the Rejection

The Examiner indicated that the Office Action of April 18, 2006 is final. Applicants respectfully note that any subsequent action on the merits of an application cannot be made final if it includes a rejection on newly cited art that is neither necessitated by the Applicant's amendment of the claims nor based on art cited in an Information Disclosure Statement. M.P.E.P. 706.07(a).

In the present Action, the Examiner introduces a rejection based upon the newly cited art of Larson (U.S. Patent 5,975,769). In particular, the Examiner rejected claim 1 under 35 U.S.C. 103(a) as being unpatentable over Larson et al. (U.S. Patent 5,975,769) in view of Petrunia (U.S. Patent 5,212,761) (see pages 6-7 of the Detailed Action). Claim 1 was not amended in the prior Amendment of January 23, 2006; nor is this rejection based upon art cited in an Information Disclosure Statement. Applicants respectfully submit that a final rejection is premature and request withdrawal of the finality.

(It is noted that while the Examiner indicated in the heading of this rejection on page 5 of the Action that only claims 10, 12-16, and 37 are involved in this particular rejection, the Examiner provided specific statements directed toward claims 1 and 38-49. Applicants therefore assume these claims are included in the rejection, as claims 38-49 are otherwise left unaccounted for in Detailed Action.)

Rejections Under 35 U.S.C. §102

The Examiner rejected claim 1 under 35 U.S.C. §102(b) as being anticipated by Petrunia (U.S. Patent 5,212,761). Applicants respectfully traverse this rejection.

Claim 1 recites a housing having a bottom, a top, a rear, and a front. The bottom, the rear, and the sides define a cable notch region, wherein the cable notch region defines an opening for receiving a cable. A cable clamp extends from the rear in the cable notch region.

The Examiner asserts that Petrunia discloses a housing have an opening in a cable notch region, as "'the cable notch region' is a broad term that includes the region within and surrounding the cable notch." Applicants have pointed out, however, that the "cable notch region" is particularly defined in claim 1 as the region defined by the bottom, rear, and sides.

The Examiner responds to Applicants' submission by stating that Applicants are defining the curved wall to be the "top"; and that in contrast, the curved wall is considered to be the rear of the housing by the Examiner.

Please note that not only are Applicants submitting that a portion of the curved wall in Petrunia is a top wall, **Petrunia** as well defines a portion of the curved wall as a "top" wall. Col. 2, lines 18-19. Referring to FIG. 1, the opening 40 is between a planar portion and a curved portion of the housing. **Petrunia** discloses that at least a portion of the top wall 13 is curved; accordingly, the curved portion that defines the opening is clearly not the "rear" wall, as the Examiner asserts, but is instead the "top" wall, as defined by **Petrunia**.

It is respectfully submitted that the Examiner is creating a definition of a rear wall that is not supported by Petrunia, and which definition, is in fact, contrary to Petrunia's definition. It is impermissible to broaden the disclosure of Petrunia as the Examiner proposes.

Further, it is respectfully submitted that the Examiner has construed the limitations of claim 1 in a way that contradicts the plain meaning of the language. The opening 40 of Petrunia is clearly in a region defined by the top, not a region defined by the bottom. Whether or not Petrunia has a channel that extends between a first region defined by the

bottom, sides and rear, and a second region defined by the top sides and rear, does not permit one to re-characterize the required location of the opening. The plain language of claim 1 requires the opening to be in a region that is defined by the bottom, sides, and rear--not the top, sides and rear.

In addition, the Examiner's use of Petrunia as a basis for rejection appears to contradict the Patent Office's "Reasons for Allowance" made during prosecution of the original application for the same claim. The Patent Office previously stated that while Petrunia discloses a pin 23, the pin "is not intended to clamp the incoming cable 21 . . . because a clamp 22 is provided in a different portion of the module . . . although Petrunia discloses a "cable notch region" . . . , the structure that *might* be modified to provide a clamp does not extend from the *rear* of the housing as set out in claim [1]." (See Reasons for Allowance in Action dated 8/22/01; underlining only added).

In preparing Reasons for Allowance, care is taken to ensure that statements are accurate, precise, and do not place unwarranted interpretations upon the claims. MPEP 1302.14. While Applicants are well aware an Examiner's consideration of art does not prevent its use as prior art in a reissue application, Applicants are concerned about the Examiner's misinterpretation of Petrunia and the recited claim language, which contradicts the "Reasons for Allowance" directed specifically at Petrunia and the recited claim language.

It is submitted that the Examiner has improperly construed the claim limitations of claim 1 and the disclosure of Petrunia, as evidenced by: 1) Applicants' recited definition of the location of the opening and the clamp; 2) Petrunia's own disclosure and definition of a top curved wall, which contradicts the Examiner's characterization; 3) the Examiner's construction of a definition that contradicts of the plain meaning of the claim language; and 4) the reasons previously put forth by the Patent Office that provide "a complete and accurate picture of the Office's consideration of patentability" over Petrunia. (Id.)

Applicants respectfully request withdrawal of this rejection.

Rejections Under 35 U.S.C. §103

I. The Examiner rejected claims 4-9 under 35 U.S.C. §103(a) as being unpatentable over Petrunia (U.S. Patent 5,212,761). Applicants respectfully traverse this rejection.

Claims 4-9 depend upon claim 1. In view of the remarks regarding independent claim 1, further discussion regarding the independent patentability of dependent claims 4-9 is believed to be unnecessary. Applicants submit that dependent claims 4-9 are in condition for allowance.

II. The Examiner rejected claims 10, 12-16, and 37 under 35 U.S.C. §103(a) as being unpatentable over Larson et al. (U.S. Patent 5,975,769) in view of Petrunia (U.S. Patent 5,212,761). It is noted that the Examiner further provided reasons for the rejection of claims 1, and 38-49. It is believed that the Examiner intended to include these claims in this rejection. Applicants have responded accordingly, but request immediate notification if this assumption is incorrect. Applicants respectfully traverse this rejection, but have amended claim 10, and cancelled claims 40-48 to advance this case to allowance.

A. **Claims 1 and 49**

Claim 1 recites a module having a housing that defines a cable notch region, and a clamp extending from a rear of the housing in the cable notch region.

The Examiner states that Larson discloses the recited limitations of claim 1, with the exception of a clamp extending from the rear in the cable notch region. The Examiner relies upon Petrunia to make up for the deficiencies of Larson. In particular, the Examiner states that it would have been obvious to incorporate the clamp 22 of Petrunia at the end of the fiber passageway 23 of Larson.

It is not clear to which end of the passageway 23 the Examiner refers, the interior end, or the exterior end. Given the teachings of Petrunia, Applicants submit that the only reasonable interpretation is that the end to which the Examiner refers is the interior end.

In particular, Petrunia teaches that the module is designed to provide needed cable slack when the module is installed into or removed from a distribution shelf. That is, the cable is free to flex out of the channel 14 when installing the module or removing the module. Col. 1, lines 43-47; col. 3, lines 52-64. A pin 23 is provided in the channel 14 to

secure the cable within the channel after the module is installed, however, the pin is "removed during module installation or removal, allowing the stiff cable to flex freely into and out of the channel 14." Col. 2, lines 62-68.

To permit the stiff cable to flex freely into and out of the channel, the clamp 22 of Petrunia is not located within the channel; instead, the clamp 22 is located in the interior of the housing and is "positioned as close to the front panels 16, 17 as possible without interfering with the connectors 20, 30." Col. 3, lines 8-14. Petrunia teaches that the clamp is to be positioned within the interior of the housing. Accordingly, in combining the teachings of Petrunia with the teaching of Larson, it is only reasonable to assume that Examiner intended that the clamp 22 of Petrunia be placed at the end of the passageway 23 of Larson, as shown on the attached annotated Figure 2 of Larson.

Referring now to the attached annotated Figure 2 of Larson, the proposed modification still does not meet the structural limitations recited in claim 1. Claim 1 recites a notch region defined by a bottom, a rear, and opposing sides of a housing. The clamp is required to extend from the rear of the housing in the notch region. In the proposed module, the clamp extends from the side 10c of the housing and is not with the notch region. It is clear where the clamp should be located in Larson to establish a basis for rejection. The references, however, do not provide the motivation to place the clamp in the location required by claim 1; instead, such motivation can only be derived from Applicants' own specification, and based upon impermissible hindsight reconstruction.

The combined teachings of Petrunia and Larson fail to teach or suggest a clamp located in a notch region. The combined teachings of Petrunia and Larson also fail to teach or suggest a clamp extending from the rear of a housing. At least for these reasons, Applicants respectfully submit that claim 1, and dependent claim 49, are patentable.

B. Claims 10, 12-16, and 37-38

Claim 10 has been amended to incorporate the subject matter of objected-to claim 11. Applicants respectfully submit that claim 10, and dependent claims 12-16 and 37-38 are now in condition for allowance.

Allowable Subject Matter

Claims 35 and 36 are allowed. The Examiner objected to claim 2, 3 and 11, but indicated that claim 2, 3, and 11 would be allowable if rewritten in independent form incorporating all the limitations of the base claim and any intervening claims. Applicants thank the Examiner for this notification.

Claim 10 has been amended to incorporate the limitations of objected-to claim 11. Applicants respectfully submit that independent claim 10, and its associated dependent claims, are now in condition for allowance.

SUMMARY

It is respectfully submitted that each of the presently pending claims (claims 1-10, 12-16, 35-39, and 49) is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' representative at the below-listed telephone number if it is believed that prosecution of this application may be assisted thereby.

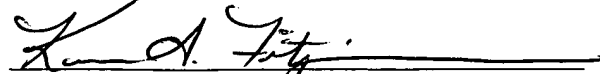
Although certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentably distinct. Applicants reserve the right to raise these arguments in the future.

Respectfully submitted,



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